



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR96-2201

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102321.

The Tarrant County Sheriff's Department (the "department") received a request for information from an attorney representing an inmate incarcerated in a correctional facility operated by the Texas Department of Criminal Justice in Huntsville, Texas. You ask, initially, whether the request may be denied pursuant to section 552.027 of the Government Code.

Section 552.027 provides the following:

(a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.¹

¹ Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

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Gov't Code § 552.027 (footnote added).

By enacting section 552.027, the legislature intended to prevent inmates from using information obtained through the Open Records Act "to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees." Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (quoting from "Background") (available through the Senate Research Center). After careful consideration and given the stated purpose of section 552.027, we do not believe that the legislature intended to prevent an attorney, who is subject to rules of professional responsibility, from requesting information on behalf of an inmate whom he is representing. Accordingly, we conclude that section 552.027 does not relieve a governmental body of its obligation to accept and comply with an open records request from an individual acting on behalf of an attorney who is representing an inmate.

However, the Office of the Attorney General will raise mandatory exceptions like sections 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Accordingly, we observe that section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that the documents contain what appears to be criminal history information ("CHRI"). As this office has previously observed:

The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made

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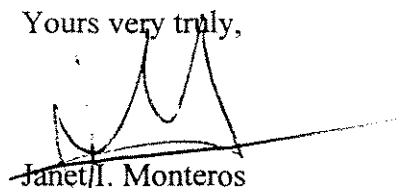
- (A) a municipal or county jail;
- (B) a confinement facility operated by the Texas Department of Criminal Justice;
- (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and
- (D) a community corrections facility operated by a community supervision and corrections department.

available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

Open Records Letter No. 96-0394 (1996). The department, therefore, must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code. Because you have raised none of the act's other exceptions to required public disclosure, the department must release to the requestor all of the remaining requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID#102321

Enclosures: Submitted documents

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(w/o enclosures)